



**In re Estate of NWN (Deceased) (Succession Cause 1188 of 2017)
[2024] KEHC 3214 (KLR) (Family) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3214 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1188 OF 2017**

SN RIECHI, J

MARCH 20, 2024

IN THE MATTER OF THE ESTATE OF NELLIE WANJIKU NJUGUNA (DECEASED)

BETWEEN

NMN **1ST APPLICANT**

CKN **2ND APPLICANT**

AND

DCN **1ST RESPONDENT**

AAN **2ND RESPONDENT**

MWK **3RD RESPONDENT**

RULING

1. NW the deceased was married to FN. They had 2 biological sons;

1. DC

2. NNM

They also had one adopted son:

3. AAN

2. N died on 6.7.2017 at Apollo Hospital in India. FN the husband of the deceased filed this Petition for grant of Letters of Administration with the consent of the children. A grant of letters of administration intestate was issued to FN on 15.11.2017. Among the Assets forming the estate of the deceased were several properties in Nairobi and shareholding in several companies including St. Nicholas Schools Ltd which was running St. Nicholas Schools.



3. On 24.1.2018 FN the Administrator applied for Confirmation of the grant notwithstanding that the six months had not expired since issue of the grant for the reason that there was the school to run. On 20.2.2018 the grant was confirmed and Certificate of Confirmation of grant issued by Achode J. vesting all the deceased Nellie's estate to FN Absolutely.
4. Before he would finalize the Administration of the Estate of NFN the Administrator died on 1.6.2018. Upon the death of FN the sons of the deceased filed application dated 12.6.2018 for substitution of Francis with the sons. By order dated 21.6.2018 Muigai J. ordered:
 1. That the application is certified urgent.
 2. That the Administrator FN died on 1st June 2018 as per the burial permit and the eulogy annexed to the application.
 3. That there are urgent and special circumstances all the children /sons of the deceased are running the family business/entity- ST Nicholas School consisting 543 students and 84 staff members and require access to the account in default the operations of the school will be paralyzed.
 4. That the deceased Co-owners of the business NWN and FN husband and wife and parents of;
 - a. DCN
 - b. NNM &
 - c. AAN are deceased leaving the sons/children to take over and run the family business jointly.
 5. That the three sons consented to the substitution of the grant and confirmed grant and jointly be appointed administrators of the estate of the deceased.
 6. That the grant of 15/11/2017 and confirmed grant of 20/02/2018 are hereby rectified/ amended/substituted with the following; FN h/o NWN and administrators of the estate shall be replaced by DCN NNMAAN s/o the deceased parents to be administrators of the estate of the deceased and hold jointly the estate of the deceased persons pending the grant and confirmed grant of the deceased's fathers estate.
 7. That the three sons named above shall jointly access and operate the account of St Nicholas school Limited KCB Bank, Moi Avenue A/c xxxx as 3 signatories for the purpose of {operations of ST Nicholas Schools Limited and shall account to the court and school pending grant under section 67 of the Law of Succession Act Cap 160 of the deceased's estate of FN.
5. On 28.7.2021 a grant of Letters of Administration intestate was issued by Thande J. jointly to DCN and AAN. In the meantime, NNM a beneficiary died on 20.3.2020. The grant was confirmed and Certificate of Confirmation dated 30.7.2021 issued. In the Confirmed grant the estate of N was distributed as follows:



Name	Description of Properties	Share of Heirs
DCN	Nairobi L.R. No. 209/2702	40%
Estate of NNM	Nairobi L.R. No. 209/2538/1	40%
AAN	Nairobi L.R. No. 209/2538/2	20%
	Nairobi L.R. No.209/2119	
DCN	Naivasha/ Mwichiringiri/4/3877	Absolutely
Estate of NNM	Shares in Nellie Apartments Limited	In equal shares
AAN		
DCN	Shares in Regina Coeli Management Limited	Absolutely
DCN	Shares in Regina Coeli Court Limited	In equal shares
Estate of NNM		
DCN	Shares in St. Nicholas Primary School Limited	40%
Estate of NNM		40%
AAN		20%



Name	Description of Properties	Share of Heirs
DCN Estate of NNM AAN	Shares in St. Nicholas School Limited	40% 40% 20%
DCN Estate of NNM AAN	Shares in St. Nicholas Senior School Limited	40% 40% 20%
DCN Estate of NNM AAN	Money in M Oriental Bank Limited, Nairobi Branch, Finance House, account no. xxxx Money in NIC Bank Limited, Masaba Branch account no.xxxx Money in M Oriental Bank Limited, Nairobi Branch, Finance House account no.xxxx	In equal shares
Estate of NNM	Motor vehicle registration No. KBQ 383 R	Absolutely
AAN	Motor vehicle registration No. KBQ 682 M	Absolutely
DCN AAN Estate of NNM	Nairobi L.R. No. 1/283	40% 30% 30%
DCN	Kijabe /Kijabe Block 1/2705 Longonot/Kijabe Block 2/7059 (Utheri Wa Lari)	Absolutely

6. On 25.3.2022 the applicants NMN 1st applicant & CKN 2nd Applicant filed this Summons for revocation or annulment of grant seeking the following prayers:
- i. That the Applicants have reliably established that the shares of their deceased father in their grandparents estate have already been interfered with and revised and or reduced from 40% to 30% in L.R NO. 1/283 by the Respondents who have further apportioned the estate's assets omitted in this cause being Kijabe/Kijabe Block 1/2705 and Longonot/Kijabe Block 2/7059



(Utheri wa Lari) amongst themselves without the Applicant's involvement, knowledge and consent and to their detriment contrary to the Law of Succession.

- ii. That further some of the assets have already been sold or are about to be sold in particular L.R NO. 1/283 without firstly the dependants of the estate of NNM applying for grant of representation and or petitioning for grant of letters of administration intestate as required by law and secondly the Respondents have instead filed for Summons for Rectification of Grant and ended up altering and intermeddling with distribution of the Applicants' father's estate in this cause.
 - iii. That there is likelihood of the Applicants' father's shares in this cause being allocated and distributed to strangers who are not part of dependants.
7. The application is supported by Affidavit of the applicants sworn on 16.3.2022. Briefly the applicants aver that they are sons of NNM who was a son to the deceased NWN. On 29.5.2020 their father died. On 6.7.2020 one MWK presented herself to the chief and alleged that she was a wife of NNM and that he had died leaving the following dependants:
- a. MWK – wife
 - b. NNM – Son (Minor)
 - c. NMN – son
 - d. CKN- son
8. The applicants aver that the said MW is a stranger as she was not a wife of NNM. The applicants also aver that the shares of the estate of NNM was reduced in the Certificate of confirmed grant and that the distribution was not equitable. Finally, the applicants aver that they reside in America and have been sidelined in the proceedings and illegal and irregular activities have been undertaken by the respondents. They therefore aver that the grant was obtained without consultation, uttering of false statement and concealing material facts relevant to the cause.

discretionary filed a Replying affidavit sworn on 23.3.2022. he depones that he is an administrator and son of Deceased N. He depones that applicants are children of his brother NN who was a co-administrator but died on 20.5.2020. In explaining the chronology of events he depones:

1. That my brother N died on 20th May 2020 as a result of which, as the record will bear me witness, the Certificate of Confirmation of Grant dated 20th February 2018 and rectified on 25th October, 2018 was revoked by Justice Thande on 28th July, 2021 and a fresh grant was issued July 2021 wherein my other brother to AAN and I were named Administrators of the Estate (At page 1 of the exhibit annexed hereto is a copy of the Grant).
2. That additionally a Certificate of Confirmation of Grant was issued on 30th July 2021 and the property that was to be distributed to my late brother N, was distributed to his estate (At Pages 2-3 of the exhibit annexed hereto is a copy of the Certificate of Confirmation of Grant).
3. That whilst the Succession process with respect to my late brother's estate is still ongoing, the estate of NWN has largely been distributed and thus a revocation of the Grant would serve no purpose.
4. That I have noted the Objector's herein have dispute respect to three properties. to wit, Kijabe/ Kijabe Block 1/2705, Longonot, Kijabe Block and the ratio of the distribution of Nairobi L.R. No. 1/283 which they state was altered after the demise of their father.



5. That I now wish to set out the facts culminating in the rectification as follows:
 - a. Prior to N death, he was hospitalized at Aga Khan and had no insurance.
 - b. All his hospital bills were paid by me and I also footed the funeral expenses. (At pages 4 50 of the exhibit annexed hereto are copies of some of the receipts issued to me).
 - c. Following the demise of my mothers the late NWN, there a facility in the bank for a sum in excess of Ksh.52,000,000/- and eleven months later when my father FN died I took up the payments of the loan and single-handedly paid close Ksh.40,000,000/- clear the debt. (At pages 51- 56 are copies of the bank statement).
 - d. When N died, his wife MWK, my brother (and Co-Administrator) Administrator) AANI held meeting and resolved it was necessary to have the confirmed grant amended and by that time had we had found two titles that had been omitted from the original distribution.
 - e. We filed an application in which consented on the changes required and the Honourable Lady Justice Thande upon hearing our Advocates' submissions made a ruling in which she revoked the earlier grant and issued new one.
 6. That the new grant has distributed N share to his estate.
 7. That I am informed by advocates on record, which information I verily believe to be true, that grandchildren have no automatic right to inherit from their grandparents' as they should inherit from their own parents.
9. By Consent the application was canvassed by way of Written Submissions. Mr. Ndegwa for applicants submits that the applicants are sons of NN who was a son of the deceased N. The Administrator of the Estate of NFN died before completion of process of transmission. Subsequently, his father and 1st and 2nd Respondent filed for summons for rectification which was granted and NNM, 1st and 2nd respondents were appointed administrators and a certificate of confirmation was issued. Before the 3 administrators would complete the transfer of the estate to the heirs, NNM, the applicant father died. The 1st and 2nd Respondent then sought a rectification of grant which was granted, grant rectified and certificate of confirmation rectified. Counsel submits that this act of rectification led to varying of the shares of the beneficiaries and that the share of applicant's father was reduced. He submits that they made misrepresentation to court.
10. Counsel submits that the 1st and 2nd Respondents have intermeddled with the estate. He submits that the grounds on revocation is provided for in Section 76 of the Law of Succession Act have been established. Counsel referred this court to several authorities to buttress his submissions.
- Ms. Kiarie Kariuki & Githu Advocates for the 1st and 2nd Respondents filed submissions dated 19.6.2023. Counsel submitted that the applicants are grand-children of the deceased as their father NMN was the son of the deceased. Nicky died on 20.5.2020 and a fresh grant was issued and later confirmed. He submits that during the confirmation the estate of Nick was provided for.
11. In this application it is not in dispute that the applicants are children of NMN who was the beneficiary of the estate of deceased and administrator. Nicky died before transmission was done and the grant was rectified and the deceased N was removed as administrator. The grant was then set for confirmation whereby 2 other properties which had been left out were included. The main contention by the applicants is that the rectification was conducted fraudulently and that in the new Certificate of Confirmation the share of their father was reduced from 40% to 30%.



This application for revocation is anchored on section 76 of the *Law of Succession Act* CAP 160 which lays down the basis upon which a grant may be revoked. The Act provides that the court must be satisfied that:

- (a) The proceedings to obtain the grant were defective in substance;
- b. The grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- c. The grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- d. The person to whom the grant was made has failed, after due notice and without reasonable cause either: -
 - i. to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - ii. to proceed diligently with the administration of the estate; or
 - iii. to produce the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of Section 83 or has produced such inventory or account which is false in any material particular; or
- b. the grant has become useless and inoperative through subsequent circumstances.

In Albert Imbuga Kisigwa Vs Recho Kawai Kisigwa, Succession Cause No. 158 Of 2000 held:

Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice."

12. The Respondents' explanation is that after the initial grant was revoked, 2 more properties were discovered to have been left out. These properties were included in the fresh confirmation and the shares in the original grant had to change because of the new assets.

Upon perusal of the fresh Confirmation dated 30.7.2021 by Thande J. the only share I can see of 30% to the estate of N is Nairobi LR 1/283, but AN is also getting 30% and yet he is one of the Administrators. That therefore does not point to any discrimination as alleged.

13. I have perused the applications and submissions; I do not find that the applicants have proved any of the grounds in section 76 for revocation of the grant. The applicants' father's estate has been provided for and I find the distribution equitable. I therefore find no merit to this application which is hereby dismissed.

Each party to bear his/her own costs.

DATED AT NAIROBI THIS 20TH DAY OF MARCH 2024

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S. N. RIECHI

JUDGE

